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JOINT APPLICATION OF

J.W. HOLDINGS, INC.

and

CASE NO. PUE-2002-00235

**MARINERS LANDING WATER &
SEWER COMPANY, INC.**

**For authority to acquire and dispose of
utility assets pursuant to the Utility
Transfers Act and for the issuance of
Certificates of public convenience and
Necessity pursuant to Va. Code §§ 56-
265.2 and 56-265.3**

HEARING EXAMINER'S RULING

June 19, 2002

On May 6, 2002, J.W. Holdings, Inc. ("J.W. Holdings") and Mariners Landing Water & Sewer Company, Inc. (the "Company") (collectively the "Joint Applicants") filed a Motion for Expedited Hearing. In support of their Motion, the Joint Applicants state they filed an Application on April 16, 2002, for: (i) J.W. Holdings to dispose, and the Company to acquire, certain utility assets; and (ii) a certificate of public convenience and necessity for the Company to own and operate the utility assets. On April 18, 2002, the Commission's Division of Energy Regulation (the "Staff") filed a Certificate of Completeness with respect to the Application. The Staff advised the Joint Applicants that the hearing on the Application would most likely be in September 2002.

The Joint Applicants argue that in order to continue providing adequate water service to their existing and proposed new customers, the Company needs to make approximately \$410,000 in capital improvements. Because the Company was incorporated on March 14, 2002, it has no ability to finance the capital improvements with existing funds and no credit history. The Company is in the process of seeking loans to make the improvements, but must disclose that it has a pending application for a certificate of public convenience and necessity, and that the Commission has not approved its rates and charges. Without an expedited hearing, the Company fears its ability to obtain financing to make these improvements would be jeopardized and would impact the continued development of the subdivisions comprising the Mariners Landing community.

On May 10, 2002, the Commission entered a Preliminary Order. In that Order, the Commission found that J.W. Holdings is currently providing water service to more than 50 customers without having obtained a certificate of public convenience and necessity, and

was, therefore, in violation of Va. Code § 56-265.3. Pursuant to Va. Code § 56-240, the Commission ordered that J.W. Holdings' rates shall be interim and subject to refund as of the date of the Order while the reasonableness of its rates is being investigated by the Staff. Further, the Commission consolidated Case No. PUE-2002-00099 with Case No. PUE 2002-00235, and assigned the matter to a Hearing Examiner to conduct all further proceedings, including establishing a procedural schedule for a public hearing. Finally, the Commission ordered the Staff to file a response to the Joint Applicants' Motion for Expedited Hearing.

On May 20, 2002, the Staff filed its Response to the Joint Applicants' Motion for Expedited Hearing. In its Response, the Staff stated that it would be unable to perform its review of the Application and participate in any hearing scheduled before September 2002, at the earliest. The Staff explained its role in reviewing an application such as the one filed by the Joint Applicants. The Staff must be in a position to opine whether the transfer of the utility assets would impair or jeopardize the provision of adequate service to the public at just and reasonable rates; whether the public convenience and necessity require the issuance of a certificate to acquire utility assets; whether the proposed rates and charges of the company acquiring the assets are just and reasonable; and whether it is in the public interest for such company to provide utility service. The Staff is particularly concerned with its ability to audit the Company's books and records to determine whether the Company's charges are just and reasonable. The Joint Applicants advised the Staff that separate financial information for the water system does not exist. The Staff advised the Company to track revenues and expenses associated with the system for the period January 1, 2002 through June 30, 2002, and submit a balance sheet and income statement for the six months ending June 30, 2002. With this information, the Staff could then schedule its audit of the Company's records, and prepare its report to the Commission and its testimony for this proceeding.

Upon consideration of the pleadings, I find the Joint Applicants have failed to establish the need for an expedited hearing. This case was initiated by a complaint concerning rate increases for water service, not the lack of, or inadequate, water service. There are no emergency service issues that need to be addressed by the Commission. The only reason the Company would need to secure immediate financing would be to facilitate J.W. Holdings' development operations. The Company cannot engage in any water utility construction activities or system expansions until it has obtained a certificate of public convenience and necessity from the Commission. If the representations in the water utility customers' petition are taken as true, it appears J.W. Holdings' predicament is one of its own making. Well in advance of the petition being filed by its customers, J.W. Holdings was aware of the requirement to obtain a certificate of public convenience and necessity for its water utility once it exceeded 50 customers. It chose not to do so. Now, it apparently needs the Company to secure a certificate of public convenience and necessity as soon as possible. The Staff has indicated that it would be hard-pressed to complete its review of the Joint Application, and perform an audit on the Company's books and records before September, even if the Joint Applicants cooperated. The commingling of the water utility's accounts with J.W. Holdings' development activities warrants a thorough audit of the utility's revenues and expenses to determine whether utility revenues may have been

improperly used to support other development activities, and to determine just and reasonable water rates on a going-forward basis. Accordingly,

IT IS DIRECTED THAT:

- (1) The Joint Applicants' Motion for Expedited Hearing is hereby denied;
- (2) A public hearing is scheduled for September 19, 2002, at 10:00 a.m., in the Commission's second floor courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia, for the purpose of receiving evidence relevant to the Joint Application;
- (3) Any person desiring to comment in writing on the Joint Application may do so by directing such comments on or before August 7, 2002, to the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, VA 23218-2118. Such comments must refer to Case No. PUE-2002-00235. Any person desiring to make a statement at the public hearing concerning the Joint Application need only appear in the Commission's second floor courtroom at 9:45 a.m. on the day of the hearing and identify himself or herself to the bailiff as a public witness;
- (4) On or before July 17, 2002, any person desiring to participate in this proceeding as a Respondent, as defined in Rule 5 VAC 5-20-80 B, shall file an original and twenty (20) copies of a Notice of Participation with the Clerk of the Commission and shall serve a copy of the same on the Joint Applicants' counsel, Wilburn C. Dibling, Jr., Esquire, Gentry, Locke, Rakes & Moore, 10 Franklin Road, S.E., P.O. Box 40013, Roanoke, VA 24022-0013, and upon other parties of record. The Notice of Participation shall contain: (i) a precise statement of the interest of the Respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action;
- (5) Within five (5) days of the receipt of any Notice of Participation, the Joint Applicants shall serve upon each Respondent a copy of the Joint Application and all materials now or hereafter filed by the Joint Applicants with the Commission;
- (6) On or before August 7, 2002, the Joint Applicants shall file with the Clerk of the Commission an original and twenty (20) copies of any direct testimony they intend to present in support of their Joint Application during the public hearing to be convened September 19, 2002;
- (7) A copy of the Joint Application, prefiled testimony, and other documents now or hereafter filed in this matter will be available for public inspection during regular business hours, from 8:15 a.m. to 5:00 p.m., Monday through Friday, in the State Corporation Commission's Document Control Center, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia;
- (8) The Joint Applicants shall promptly make a copy of their Joint Application, prefiled testimony, and other documents now or hereafter filed in this matter available for

public inspection during regular business hours, 8:30 a.m. to 5:00 p.m., Monday through Friday, at the Bedford County Administrator's office, 122 East Main Street, Bedford, Virginia 24523;

(9) Any person who expects to submit evidence, cross-examine witnesses, or otherwise participate in the proceeding as a Respondent, shall file on or before August 7, 2002, an original and twenty (20) copies of the prepared testimony and exhibits the Respondent intends to present at the hearing, with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, referring to Case No. PUE-2002-00235, and shall simultaneously send a copy thereof to the Joint Applicants' counsel and to any other Respondents. Any corporate entity that wishes to submit evidence, cross-examine witnesses, or otherwise participate as a Respondent must be represented by legal counsel in accordance with the requirement of Rule 5 VAC 5-20-30 of the Commission's Rules of Practice and Procedure;

(10) The Commission's Staff shall investigate the Joint Application and present its findings and recommendations in prepared testimony and exhibits which shall be filed on or before August 28, 2002, in an original and twenty (20) copies. Staff counsel shall simultaneously serve a copy of such testimony and exhibits on counsel for Joint Applicants at the address set forth above and to each Respondent;

(11) On or before September 11, 2002, the Joint Applicants shall file with the Clerk of the Commission an original and twenty (20) copies of any testimony they expect to introduce in rebuttal to the direct prefiled testimony of the Staff and Respondents. Additional rebuttal evidence may be presented without prefiling, provided it is in response to evidence which was not prefiled but elicited at the time of the hearing and, provided further, the need for additional rebuttal evidence is timely addressed by motion during the hearing and leave to present said evidence is granted by the Hearing Examiner. A copy of the prefiled rebuttal evidence shall be served upon the Commission Staff and all other parties to the proceeding on or before September 11, 2002;

(12) The Joint Applicants shall respond to written interrogatories, data requests, or requests for the production of documents within five (5) business days after the receipt of the same. Respondents shall provide to the Joint Applicants, other Respondents, and Staff, any workpapers or documents used in the preparation of their filed testimony promptly upon request. Except as so modified, discovery shall be in accordance with Part VI of the Commission's Rules of Practice and Procedure;

(13) On or before August 7, 2002, the Joint Applicants shall serve a copy of this Ruling upon the chairman of the board of supervisors and county attorney of each county and upon the mayor of every city and town (or upon equivalent officials in counties, cities, or towns having alternate forms of government) in which the Joint Applicants' proposed water utility and associated facilities will be located. Service shall be made by first-class mail to the customary place of business or residence of the person served;

(14) On or before July 17, 2002, the Joint Applicants shall cause a copy of the following notice to be sent to each of their customers by first-class mail, postage prepaid (bill inserts are acceptable):

**NOTICE TO THE PUBLIC OF A HEARING
ON THE PROPOSED JOINT APPLICATION
OF J.W. HOLDINGS, INC.
AND MARINERS LANDING WATER & SEWER COMPANY, INC.
CASE NO. PUE-2002-00235**

TAKE NOTICE THAT on April 16, 2002, J.W. Holdings, Inc. ("J.W. Holdings") and Mariners Landing Water & Sewer Company, Inc. (the "Company") (collectively, the "Joint Applicants") filed a Joint Application with the State Corporation Commission ("Commission") for: (i) J.W. Holdings to dispose, and the Company to acquire, certain utility assets; and (ii) a certificate of public convenience and necessity for the Company to own and operate the utility assets. The Company also requests approval of its proposed rates, rules, and regulations of service.

Pursuant to § 56-240 of the Code of Virginia, the Commission declared J.W. Holdings' rates to be interim and subject to refund, effective May 10, 2002. The Commission has scheduled a hearing before a Hearing Examiner to begin at 10:00 a.m. on September 19, 2002, in the Commission's second floor courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive evidence relevant to the joint application.

PLEASE TAKE NOTICE THAT while the total revenue that may be approved by the Commission is limited to the amount produced by the Company's proposed rates, the rates and charges approved for each class of service may be either higher than or lower than those proposed by the Company.

A copy of the Joint Application and accompanying materials is available for public inspection during regular business hours at the Bedford County Administrator's Office, 122 East Main Street, Bedford, Virginia. A copy is also available Monday through Friday, 8:15 a.m. to 5:00 p.m. at the Commission's Document Control Center located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia.

On or before July 17, 2002, any person desiring to participate in this proceeding as a Respondent, as defined in Rule 5 VAC 5-20-80 B, shall file an original and twenty (20) copies of a Notice of Participation with the Clerk of the Commission and shall serve a copy of the same on the Joint Applicants' counsel, Wilburn C. Dibling, Jr., Esquire, Gentry, Locke, Rakes & Moore, 10 Franklin Road, S.E., P.O. Box 40013, Roanoke, VA 24022-0013,

and upon other parties of record. The Notice of Participation shall contain: (i) a precise statement of the interest of the Respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action.

Any person who expects to submit evidence, cross-examine witnesses, or otherwise participate in the proceeding as a Respondent, shall file on or before August 7, 2002, an original and twenty (20) copies of the prepared testimony and exhibits the Respondent intends to present at the hearing, with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, referring to Case No. PUE-2002-00235, and shall simultaneously send a copy thereof to the Joint Applicants' counsel and to any other Respondents. Any corporate entity that wishes to submit evidence, cross-examine witnesses, or otherwise participate as a Respondent must be represented by legal counsel in accordance with the requirement of Rule 5 VAC 5-20-30 of the Commission's Rules of Practice and Procedure.

Any person desiring to comment in writing on the Joint Application may do so by directing such comments on or before August 7, 2002, to the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, VA 23218-2118. Such comments must refer to Case No. PUE-2002-00235. Any person desiring to make a statement at the public hearing concerning the Joint Application need only appear in the Commission's second floor courtroom at 9:45 a.m. on the day of the hearing and identify himself or herself to the bailiff as a public witness.

Persons interested in the full procedural details for this proceeding should obtain copies of the Commission orders and Hearing Examiner's rulings from the Clerk of the Commission, or from the Commission's Web site at: <http://www.state.va.us/scc/caseinfo/orders.htm>.

Individuals with disabilities who require an accommodation to participate in the hearing should contact the Commission at 1-800-552-7945 (voice) or 1-804-371-9206 (TDD) at least seven (7) days before the scheduled hearing date.

All filings and written communications to the Commission regarding this case shall be directed to the Clerk of the Commission at the address set forth above, referring to Case No. PUE-2002-00235, and with a copy served on Wilburn C. Dibling, Jr., Esquire, Gentry Locke Rakes & Moore, P.O. Box 40013, Roanoke, Virginia 24022-4013.

J.W. HOLDINGS, INC. and MARINERS LANDING
WATER & SEWER COMPANY, INC.

(15) At the commencement of the hearing scheduled herein, the Joint Applicants shall provide to the Commission proof of the notice and service required by Paragraphs (13) and (14) herein.

Michael D. Thomas
Hearing Examiner